and not a contract of suretyship within the statute of frauds, and that therefore a parol waiver of any of its conditions was valid. *Everly v. Equitable Surety Co.* (1920, Ind.) 127 N. E. 616.

It is generally conceded that a contract of fidelity guaranty, where the guarantor is a corporate surety, will be construed by the courts according to rules of construction of insurance contracts, because of the similarity in the nature of both kinds of business. *American Bonding Co. v. Morrow* (1906) 80 Ark. 49, 96 S. W. 613; *Hunter v. United States Fidelity & Guaranty Co.* (1914) 129 Tenn. 572, 167 S. W. 692; see also Stearns, *Suretyship* (2d ed. 1915) sec. 238. In the application of the insurance rules to such contracts, the courts have been called on to decide, not the rights of the parties under the contracts, but the effect of the contract after it has once been performed. Mendow, *Oral Contracts of Fidelity Guaranty* (1917) 24 CASE AND COMMENT 42, 44. On the other hand, the rights of the parties, as well as the validity of the contract, are governed by the law of suretyship and not of insurance, even where the guarantor is a surety corporation in the business. Stearns, *op. cit.*, sec. 233. It follows, therefore, that since the validity of a guaranty contract of a compensated surety corporation is governed by the law of suretyship, it will not be binding unless in writing, as it is within the statute of frauds, and the payment of a consideration cannot supply the place of a writing signed by the person to be charged, or have the effect of taking out of the statute an agreement that would otherwise be void. *Commonwealth v. Hinson* (1911) 143 Ky. 428, 136 S. W. 912; *Wainwright Trust Co. v. United States Fidelity & Guaranty Co.* (1916) 63 Ind. App. 309, 114 N. E. 470; *contra, Quinn-Shepherdson Co. v. United States Fidelity & Guaranty Co.* (1919) 142 Minn. 428, 172 N. W. 693; see also Frost, *The Law of Guaranty Insurance* (2d ed. 1909) sec. 6. It seems, however, that the conclusion reached by the court in the principal case is correct and may be justified on other grounds. As a general rule, a parol waiver by the surety of conditions in a guaranty bond will not be binding, since the bond itself is required by the statute of frauds to be in writing. *Wainwright Trust Co. v. United States Fidelity & Guaranty Co. supra.* But if one party makes it known that he does not seek strict performance and thereby causes the other party to fail to perform a condition, he would be estopped from setting up the other's failure to perform, as one who has caused a certain situation cannot rely upon it as an excuse for a failure to perform his own obligations. *Hellman v. City Trust, Safe Deposit & Surety Co.* (1906) 111 App. Div. 879, 98 N. Y. Supp. 51; Browne, *Statute of Frauds* (5th ed. 1895) sec. 423 ff.; 1 Williston, *Contracts* (1920) sec. 595. The courts, in their efforts to protect a premium-paying public, will probably follow the principal case in holding that guaranty contracts of corporate surety companies need not be in writing, though such contracts seem to be within the statute of frauds.

MUNICIPAL CORPORATIONS—GARNISHMENT—CITY TREASURER NOT LIABLE TO GARNISHMENT OF MONEY ORDERED PAID TO CONTRACTOR.—The city council had ordered the treasurer of the city to pay the defendant for fire engines. In an action for damages caused by the negligence of the defendant, the plaintiff tried to garnish the sum due in the hands of the city treasurer. *Held,* that the garnishment process should be quashed, as a city official is not subject to such process for reasons of policy. *Leiter v. American-La France Fire Engine Co.* (1920, W. Va.) 104 S. E. 56.

The rule generally stated is that a municipal corporation is not subject to garnishment. *Haddock v. McDonald* (1916) 98 Kan. 628, 159 Pac. 402; *Tribune Reporter Printing Co. v. Homer* (1917) 51 Utah, 153, 169 Pac. 170. It follows that a city official is also exempt. *Triebel v. Colburn* (1872) 64 Ill. 376. The garnishment statutes are so construed that "person," though including corporations, does not include municipal corporations. *Welch Lumber Co. v. Carter*

Bros. (1916) 78 W. Va. 11, 88 S. E. 1034; *contra, Bray v. Wallingford* (1850) 20 Conn. 416. A similar interpretation is given to the word "corporations." *Underhill v. Calhoun* (1879) 63 Ala. 216; *contra, Wilson v. Lewis* (1872) 10 R. I. 285. This exemption is based on reasons of public policy: a public corporation, existing for the welfare of the public, can not be subjected to inconvenience and expense in order that one private individual may the better collect a demand from another; the time of the officers would be consumed; it would lead to the impoverishment of the public service if salaries could be garnished; and performance of contracts would be impaired if the means therefor could be attached. *Merwin v. City of Chicago* (1867) 45 Ill. 133; *Switzer v. City of Wellington* (1888) 40 Kan. 250, 19 Pac. 620. The last two reasons have especial weight, and the garnishment of salaries or of money for contracts not yet performed is not generally allowed. *Tribune Reporter Co. v. Homer, supra.* But, except for these classes of debts, garnishment is frequently allowed. *Mayor of Jersey City v. Horton* (1875) 38 N. J. L. 88; *Laredo v. Nalle* (1886) 65 Tex. 359. Statutes have indirectly influenced decisions in this direction. *City of Denver v. Brown* (1888) 11 Colo. 337, 18 Pac. 214; *Mitchell v. Miller* (1905) 95 Minn. 62, 103 N. W. 716. Express statutory provisions illustrate this same tendency. *Ott Hardward Co. v. Davis* (1913) 165 Calif. 795, 134 Pac. 973. Where garnishment is not allowed, a bill in equity is sometimes granted. *Pendleton v. Perkins* (1872) 49 Mo. 565; *Plummer and Davis v. School Dist. No. 1* (1909) 90 Ark. 236, 118 S. W. 1011; *contra, Dollar v. Commission Co.* (1900) 78 Miss. 274, 20 So. 876. The view that garnishment should be allowed in the case of an ordinary debt, as where the contract with the city has been completed, has the support of Mr. Dillon. 1 Dillon, *Municipal Corporations* (5th ed. 1911) sec. 249. A creditor has in general a power to subject all assets of a debtor, except such as are expressly exempted by law from execution, to payment of his debts. The immunity of a city which restricts this power should be limited strictly to those cases where policy strongly requires that such immunity be granted. The instant case, following precedents in West Virginia, overlooks all such distinctions and rejects what is submitted to be the more modern and more liberal tendency.

MUNICIPAL CORPORATIONS—LIABILITY FOR TORTS IN CONNECTION WITH ULTRA VIRES OR "GOVERNMENTAL" ACTS.—The officials of the defendant town expelled the plaintiffs from town by means of unlawful criminal prosecution. The town by vote authorized or ratified these wrongful acts of its servants; and these suits were brought by the plaintiffs to recover against the town for malicious prosecution, abuse of legal process, and conspiracy. *Held,* that the plaintiffs should not recover, because the acts complained of were wholly beyond the powers of the town. *Brown v. Town of Edgartown, Norton v. Town of Edgartown* (1920, Mass.) 128 N. E. 1.

The law seems to be well settled in most jurisdictions that a municipal corporation is not liable for torts committed in the exercise of its "governmental" functions. *Bolster v. City of Lawrence* (1917) 225 Mass. 387, 114 N. E. 722; *Bernstein v. City of Milwaukee* (1914) 158 Wis. 576, 149 N. W. 382, L. R. A. 1915 C, 435, note; 4 Dillon, *Municipal Corporations* (5th ed. 1911) 2838. On the other hand, municipal corporations are generally held liable for torts committed in the exercise of its so-called "ministerial" duties. *Chicago v. Selz* (1903) 202 Ill. 545, 67 N. E. 386; 4 Dillon, *op. cit.,* 2902. There is a tendency in some recent cases to hold a municipal corporation liable for torts committed in the exercise even of its "governmental" duties. *Johnston v. City of Chicago* (1913) 258 Ill. 494, 101 N. E. 960; *Kriebel v. Worcester Township* (1916) 253 Pa. 452, 98 Atl. 686; see COMMENTS (1920) 29 YALE LAW JOURNAL, 911. The courts are almost unanimous in holding that if the tort was committed in connection with an act which is wholly *ultra vires,* the town is not liable. 6